

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:20-cv-00137-MR-WCM

NEWTEK SMALL BUSINESS  
FINANCE, LLC,

Plaintiff,

V.

RETURN TO EXCELLENCE, INC.  
*doing business as*  
The Waynesville Inn Golf Resort & Spa,  
MOUNTAIN PRESERVATION, LLC,  
SN CARVER, LLC,  
WAYNESVILLE OVERLOOK, LLC,  
SAMUEL NED CARVER

Defendants.

ORDER

Before the Court is a Joint Motion to Modify Pretrial Order and Case Management Plan (the “Motion,” Doc. 39), by which the parties request that the remaining pretrial deadlines be extended by four (4) months, that the trial setting in this case be reset by at least 120 days, and that a ruling on certain pending motions be deferred.

The current deadlines and proposed deadlines are:

	Current	Proposed
Discovery:	May 10, 2021	September 7, 2021
Mediation:	May 25, 2021	September 22, 2021
Motions:	June 8, 2021	October 6, 2021
Trial Term:	November 15, 2021	March 14, 2022

On June 4, 2020, Plaintiff filed a Complaint seeking, among other things, to collect on promissory notes and to take possession of certain personal property (the “Collateral”). Doc. 1.

On October 15, 2020, Plaintiff filed a Motion for Summary Judgment. Doc. 23. The Motion for Summary Judgment, as well as various other related motions, are pending. See Doc. 26 (Defendants’ Motion to Defer Consideration of Motion for Summary Judgment or, in the Alternative, to Allow Time to Take Discovery); Doc. 30 (Plaintiff’s Motion to Strike affidavits); Doc. 34 (Defendants’ Motion for Leave to File Corrective Declarations).

In the instant Motion, the parties state that on November 16, 2020, Defendant Mountain Preservation, LLC “entered into a Purchase and Sale Agreement with a third party for the sale of Plaintiff’s collateral securing the loans at issue in this case.” Doc. 39 at 2. The Purchase Agreement has a closing deadline of April 15, 2021, and Mountain Preservation, LLC represents that the pending sale of the Collateral “remains on track to close by April 15, 2021.” Doc. 39 at 3.

Additionally, the parties report that on January 20, 2021, they entered into a Forbearance Agreement “under which Plaintiff agreed to temporarily suspend its foreclosure of the real estate collateral so long as Defendants complied with the terms of the Forbearance Agreement and successfully closed on their sale of the collateral under the Purchase Agreement by April 15, 2021.”

Id. The parties further assert that they have agreed to “request that the Court temporarily defer any rulings on the pending motions in this case until Defendants either closed on their sale of the collateral or defaulted under the Forbearance Agreement, whichever occurred first, and to move for an extension of all relevant dates and deadlines in the Scheduling Order by four months.” Id.

For the reasons set forth in the Motion, and following consultation with the chambers of the presiding District Judge, the Motion will be allowed.

Accordingly, the Joint Motion to Modify Pretrial Order and Case Management Plan (Doc. 39) is **GRANTED**, and the following deadlines are **EXTENDED**:

- a. Discovery through and including September 7, 2021;
- b. Mediation through and including September 22, 2021; and
- c. Motions through and including October 6, 2021.

In addition, the trial of this matter is **RESET** to the March 14, 2022 trial term, and consideration of the pending motions (Docs. 23, 26, 30, & 34) will be **TEMPORARILY DEFERRED**.

Signed: March 25, 2021



W. Carleton Metcalf  
United States Magistrate Judge

